

revised at a later date to reflect this need.

## 2. Option for Triggering the Trading Program in the Year 2013

*Proposed rule.* The proposed rule provided States and Tribes with the option at a specific point in time to consider emission projections for the year 2018, in addition to actual emissions inventory reports for previous years in deciding whether or not to trigger the backstop market trading program. For this option, if States and Tribes so choose, the emissions inventory reports for the year 2012—which are collected in calendar year 2013—may also contain emissions projections for the year 2018. If the projections indicate that the year 2018 milestone will be exceeded, then under the proposal, States and Tribes may choose to implement the market trading program beginning in the year 2018.

*Public comments.* One commenter representing Western business interests recommended that the WRAP develop, and the final rule contain, specific criteria for the option of triggering the trading program in 2013. The commenter recommended that, for example, the final rule should contain criteria for a specific emissions level in 2013, or a specific level of emissions reductions yet to be achieved between 2013 and 2018.

*Final rule.* In the final rule, EPA has retained the 2013 option as proposed. The EPA believes that the intent of this provision in the Annex is to provide broad flexibility to the States and Tribes for deciding whether this 2013 option should be exercised. The EPA does not believe that it is desirable or feasible to develop specific decision criteria for this purpose in the final rule.

## 3. Requirements for Recordkeeping

*Proposed rule.* The proposal, in 40 CFR 51.309(h)(iii), included a requirement for the retention of records relevant to the annual comparison of SO<sub>2</sub> emissions to the milestones for at least 5 years from the establishment of the record. For records that provided the basis for an adjustment to the milestone, the proposed rule required retention of records for at least 5 years after the date of the SIP revision.

*Final rule.* No public comments were received on this issue during the comment period. Following the close of the comment period, however, the WESTAR model rule working group<sup>8</sup> questioned whether this recordkeeping requirement would be adequate in all

cases, if EPA's intent were to retain the records for 5 years after they are relevant to the annual determination. Given the design of the program, 4 and ¼ years can elapse between the creation of a record and the use of the record in the annual comparison of regional SO<sub>2</sub> emissions against the milestone. This is because for all except the first 2 years of the program, the annual determination is based on a 3-year average of the regional SO<sub>2</sub> emissions for the preceding 3-year period. Additionally, the formal comparison with the milestone is not accomplished until 15 months after the end of this 3-year period. Thus, close to 5 years can pass from the establishment of a record to its use. The working group believed that the intent of the recordkeeping requirement was to maintain relevant records for 5 years after the determination of whether the milestone was exceeded for a given year, which could mean that some records relevant to the determination would be needed for approximately 10 years from the date they were generated. The EPA agrees that this was the intent of the recordkeeping requirement in 40 CFR 51.309(h)(iii) of the proposed rule; accordingly, the final rule extends the time period for the retention of records from 5 to 10 years.

## D. Requirements for the Backstop Trading Program

A fundamental feature of the Annex is a backstop market trading program that would be triggered if any annual milestone is exceeded. The Annex, as required by 40 CFR 51.309(f) of the regional haze rule, provided documentation and details for the backstop trading program. Attachment A to the annex was a draft model rule for use by States in implementing the backstop trading program. In the proposal, EPA included ten fundamental elements that SIPs under 40 CFR 51.309 must contain, and the basic requirements for those elements to help guide EPA's review of the SIPs. The fundamental elements described in the proposed rule were as follows:

- (1) Provisions for the allocation of allowances to each source in the program;
- (2) Emissions quantification protocols;
- (3) Provisions for the monitoring, recordkeeping and reporting of emissions;
- (4) Provisions for a centralized system to track allowances and emissions;
- (5) Provisions requiring the identification of an authorized account representative for each source in the program;

(6) Provisions requiring the account representative to demonstrate annual compliance with allowances;

(7) Provisions for the process of transferring allowances between parties;

(8) Provisions describing the "banking" of extra emissions reductions for use in future years, if the implementation plan allows for banked allowances;

(9) Provisions establishing enforcement penalties for noncompliance with the trading program; and

(10) Provisions for periodic evaluation of the trading program.

In the proposed rule, EPA included basic requirements for each of these 10 provisions, and we requested comment on whether we had addressed each requirement in an appropriate level of detail, and on whether the substance of the requirement was sufficient to ensure the integrity of the trading program.

The EPA did not receive any adverse comments regarding the level of detail of the proposed requirements for the trading program. We did receive comment on the substance of a few of the provisions that we discuss in this section of the preamble.

## 1. Allowances

*Proposed rule.* The proposed rule required the backstop trading program to include allowances. An allowance authorizes a source included within a market trading program to emit one ton of SO<sub>2</sub> during a given year. At the end of the compliance period, which is a 12-month period ending with each calendar year, a source owner's allowances must exceed or equal its annual emissions.

The proposed rule would require States and Tribes to include initial source-specific allowances for each source included within the program. Under the proposal, these initial allocations must specify the tons per year allocated for each source for each year between 2009 and 2018. The Annex contains a detailed discussion of the methodology for distributing allowances to sources. The EPA proposed, however, that the details of this methodology were not needed in EPA's rule. If those allowances add up to the appropriate regional total, EPA proposed that the objectives of the program would be met. The EPA proposed one exception to this approach, a requirement that 20,000 tons of allowances be reserved as a "set-aside" for use by Tribes.

*Public comments.* The EPA received comments on three issues related to allowances. First, the WRAP and one electric utility commenter

<sup>8</sup> See note from Lily Wong, EPA Region 9, to docket OAR-2002-0076, March 2003.